

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

MULTIMEDIA CABLEVISION, INC.

Complainant,

v.

SOUTHWESTERN BELL TELEPHONE
COMPANY

Respondent.

P.A. No. 95-008

C.S. Docket No. 96-181

DOCKET FILE COPY ORIGINAL

To: The Cable Services Bureau

PETITION FOR CLARIFICATION

Multimedia Cablevision, Inc. ("Multimedia") respectfully submits this Petition for Clarification of the Commission's Hearing Designation Order in the captioned action. *Multimedia Cablevision, Inc. v. Southwestern Bell Telephone Company*, PA No. 95-008; CS Docket No. 96-181 (Released Sept. 3, 1996) ("HDO").

1. With respect to refunds, at footnote 78 of the HDO, the Commission stated that "nothing in this *Order* should be interpreted as our holding that SWB was entitled to retroactively bill for the period before October 27, 1994." HDO ¶ 37, n. 78.

2. Based on the Commission's pronouncement in note 78, and as part of post-HDO efforts to settle this matter informally, Multimedia has requested that Respondent Southwestern Bell Telephone Company ("SWBT") refund to it the amount of \$19,929.38 that Multimedia paid to SWBT under protest for conduit rent overcharges. Multimedia paid such

all

amount on August 2, 1996 during the pendency of this proceeding and under pressure from SWBT. *See* Exhibit 1. SWBT has refused to refund such amounts.

3. The record is clear in this proceeding that SWBT issued the bill for retroactive occupancy in retaliation for Multimedia's installation of fiber optic and non-video communications facilities. *See, e.g.,* Complaint ¶¶ 18-19; Exhibit 2 to Complaint. The record is similarly clear that SWBT overbilled Multimedia by charging it according to the number of cables installed in a single duct, rather than according to the amount of actual Multimedia duct occupancy, *id.*, a result that the HDO forbids. HDO ¶ 22.


4. The import of note 78 is that SWBT was not entitled to bill Multimedia retroactively for this amount, and, therefore, is not entitled to retain the amounts that Multimedia paid to SWBT under protest, and as a result of SWBT pressure. Accordingly, Multimedia is entitled to a full refund from SWBT in the amount of \$19,929.38.

CONCLUSION

For the foregoing reasons Multimedia respectfully requests the Commission to clarify the HDO in this proceeding in the manner set forth in this Petition, and direct SWBT to refund to Multimedia the amount of \$19,929.38 paid during the pendency of this action under demand by SWBT which was contrary to the principles of this case.

Respectfully submitted,

MULTIMEDIA CABLEVISION, INC.

By  _____

Paul Glist

J. D. Thomas

COLE, RAYWID & BRAVERMAN, L.L.P.

1919 Pennsylvania Avenue, NW

Suite 200

Washington, DC 20006

(202) 659-9750

October 3, 1996

Its Attorneys

EXHIBIT 1



Multimedia Cablevision, Inc.

Union Station, 701 E. Douglas, P.O. Box 3027, Wichita, Kansas 67201 - (316) 262-4270

"Equal Opportunity Employer"

August 2, 1996

Ms. Mary Hann
Service Representative
Southwestern Bell Telephone
5400 Foxridge
Rm. 410
Mission, KS 66202

Re: Letter dated July 3, 1996

Dear Ms. Hann,

Please be advised that Multimedia has a complaint pending at the Federal Communication Commission disputing Southwestern Bell's conduit rental rates and computation methodology. Therefore, the enclosed Multimedia Cablevision check #670212147, in the amount of \$28,884.75, is being submitted under protest.

This enclosed check covers the unpaid amount of the following invoices:

316 94B-5928,297	\$19,928.58
316 95B-2581,054	2,904.10
316 95B-2781,348	3,133.08
316 95B-1604,145	13.90
316 95B-5255,226	2,904.09

Total Amount: \$28,884.75

Thank you for your consideration in this matter.

Sincerely,

Ronald L. Marnell
Vice President
KS Regional Manager

cc: Michael C. Cavell
Attorney, SWB

Multimedia Cablevision, Inc.

COMPANY CHARGED	OUR ACCT. NO.	VENDOR REFERENCE NO.	GROSS	DEDUCTION	NET
206	4100	Disputed balance w/ Southwestern Bell on conduit			\$28884.75

Detach and retain this statement

VENDOR NO.

The attached check is in payment of items described above.
If not correct please notify us promptly. No receipt desired.



Multimedia Cablevision, Inc.

P.O. Box 3027
Wichita, Kansas 67201
(316) 262-4270

BANK

Wichita, KS 67201

August 2, 1996

No. 670212147

40-4/1011

AMOUNT

\$28,884.75

PAY:***Twenty-eight thousand eight hundred eighty-four dollars and 75/100***

Cash immediately
Valid 6 months from
date on check.

TO
THE
ORDER
OF:

Southwestern Bell Telephone

Richard C. Brown
Patricia J. Kelly

⑈670212147⑈ ⑆101100045⑆ 014001621807⑈

CERTIFICATE OF SERVICE

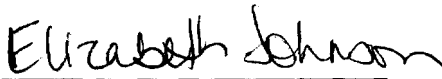
I, Elizabeth Johnson, a secretary in the law firm of Cole, Raywid & Braverman, L.L.P., hereby certify that a copy of the foregoing was mailed by first-class mail, postage prepaid, this 3rd day of October 1996, to the following:

*Michael McMenamin
Federal Communications Commission
2033 M Street, NW - Room 801-B
Washington, DC 20554

*Elizabeth Beaty
Federal Communications Commission
2033 M Street, NW - Room 904-A
Washington, DC 20554

Kansas Corporation Commission
ATTN: Utilities Division
1500 S.W. Arrowhead Road
Topeka, KS 66604

Robert M. Lynch
Richard C. Hartgrove
Jonathan W. Royston
Southwestern Bell Telephone Company
One Bell Center, Suite 3526
St. Louis, MO 63101


Elizabeth Johnson

* Via Hand Delivery